UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1170
19 August 1996

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1170th MEETING

PRIV

Held at the Palais des Nations, Geneva,
on Wednesday, 14 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-17832 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Fourth, fifth, sixth and seventh periodic reports of Namibia (CERD/C/275/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Nujoma (Namibia) resumed his place at the Committee table.

2. Mr. AHMADU commended the excellent report of Namibia, and the work done by the United Nations Council for Namibia which had submitted reports on Namibia prior to the country's independence. Namibia had adopted a systematic approach to the eradication of racial discrimination and was gradually demolishing what was left of the discriminatory legislation it had inherited from former colonial Governments. The spirit of forgiveness in the country was helping to integrate a hitherto divided society.

3. Certain questions remained unanswered. Were the smaller ethnic groups disappearing or declining and were the privileged groups of the population that had prospered under previous regimes emigrating or adjusting to the new situation in Namibia? Legislation intended to eradicate racial discrimination in all its forms was commendable, but it was not clear whether affirmative action was provided for or had been taken.

4. Namibia should consider submitting a core document to provide demographic and other relevant information which would help explain why the population had apparently fallen from 1.5 to 1.4 million inhabitants.

5. Mr. GARVALOV congratulated Namibia on its frank report that gave detailed information on the country and the human rights situation. As a young State, it was understandable that it would need time to overcome the problems it faced. Namibia had acted promptly, following independence, to adopt a Constitution and legislation criminalizing racial discrimination.

6. Paragraph 5 of the report described the ethnic composition of the population of Namibia. There was undoubtedly a division along racial and ethnic lines. The claim that the black population was made up of seven major linguistic groups might be seen as an attempt to avoid recognizing the ethnic origin and diversity of those groups.

7. The report showed how heavily the legacy of the past weighed on the country. The Government was aware of the need to repeal the racially discriminatory legislation it had inherited, but should remember that any delay in doing so would entrench discriminatory practices in the newly-independent country and would then be harder to deal with. On a more positive note, it was encouraging that the Government had been applying a policy of affirmative action in areas such as education and employment.

8. From the information in the report, it appeared that Namibia was fully complying with article 4 of the Convention. However, there was not enough information on the implementation of article 5 of the Convention. Did married

women still have to have their husband's written permission to acquire or purchase property? Did they also need the approval of their husband or a close male relative to open a bank account? Did such requirements apply only to black women?

9. The report also failed to mention ethnic minorities. It appeared that the Government was reluctant to provide such information, maybe because it saw Namibia as a unitary State and therefore included all blacks in one "majority" group, recognizing only linguistic differences. Were the Herero, Nama/Damara and other groups mentioned linguistic groups or were they ethnically different? Were the Caprivi identified by the fact that they lived in the Caprivi Strip? Information should also be provided on claims by the Herero and Nama that they were being discriminated against by the Ovambo. Similarly, information on the situation of the "Baster group", and as to why its members were being prevented from returning to their traditional land would be welcome.

10. Paragraphs 27, 28 and 29 highlighted the differences between legislation adopted in Namibia since independence and the laws it had inherited. However, Section 18 of the Racial Discrimination Prohibition Amendment Act of 1991 placed a serious obstacle in the way of anyone wishing to institute criminal proceedings under the Act and undermined the role of the courts and their independence.

11. Paragraphs 46 and 47, which asserted that racial discrimination is not a problem of national life, seemed to contradict what was stated in paragraphs 11, 14 and 29, regarding the persistence of discrimination.

12. Mr. SHERIFIS welcomed the report of Namibia, which had followed the general guidelines on the drafting of reports (CERD/C/70/Rev.3). It was encouraging to see the extent of the efforts being made to solve the problems the country faced.

13. Paragraph 6 of the report referred to a World Bank report but did not say when the report was written, so that it was not clear whether the figures showing gross inequalities in the distribution of national income reflected the situation before or after independence.

14. Clarification of how Namibia ensured the participation of all ethnic groups in the social and political life of the nation, in accordance with Article 5 of the Convention, should be provided.

15. Mr. SHAHI said that he appreciated the quality of the report of Namibia and commended the Government on its efforts to remove discriminatory legislation from its statute books. In an era of increasing xenophobia, Namibia was a shining example of racial tolerance.

16. Of particular note were Namibia's measures to deter racial discrimination and, as stated in paragraph 47, the severity of the punishment meted out to persons found guilty of racist acts. However, there were areas in Namibia's legislation that needed to be amended to ensure full compliance with the

Convention. For example, section 18 of the Racial Discrimination Prohibition Amendment Act seriously restricted the right of victims of discrimination to seek redress in the courts.

17. Mr. NUJOMA (Namibia), thanking members of the Committee for their expressions of solidarity and support for his country, said that any questions at the current session would be covered in Namibia's next periodic report.

18. Namibia's policy of national reconciliation, as the cornerstone of Government policy, had enabled the country to maintain peace and stability and had influenced South Africa's democratization process.

19. Namibia's core document, which would shortly be available to the Committee, contained detailed demographic information. Namibia's population totalled some 1.4 million, spread over a largely arid territory of some 824,269 square kilometres, resulting in an average population density of 1.7 persons per square kilometre, one of the lowest in the world. Some 70 per cent of the total population were concentrated in only 5 of the 25 census districts. A major factor in population distribution was the migration of people, particularly the able-bodied, in search of better economic opportunities.

20. The Bushmen were spread throughout the territory and in some areas had become integrated with other communities. In some of the more remote areas, the Government had provided land and established schools and agricultural projects, some of which were run by the Government, and others by NGOs. There were also plans to train those communities in the tourism sector, with a view to generating some income for them.

21. As the Bushmen had the same constitutional right of freedom of movement and settlement throughout the national territory as other nationals, there would undoubtedly be some in Windhoek, but they would probably not be wearing their traditional dress. Identification as Namibians was encouraged whereas identification by tribal or linguistic group was discouraged in the wake of the apartheid policies.

22. On the question of land distribution, the Agricultural Commission Land Reform Act No. 6 of 3 March 1995 allowed the State to acquire agricultural land and land owned by foreign nationals for the purposes of land reform and distribution, particularly to those Namibians most economically, educationally or socially disadvantaged by past discriminatory laws or practices. The Act also provided for the establishment of land tribunals and determined their jurisdiction. The Land Reform Advisory Commission had been established by section 2 of the Act and was composed of representatives of various ministries. The Commission advised the Minister of Land, Resettlement and Rehabilitation on all matters relating to the acquisition and purchase of land. The Government's policy of acquiring land from commercial farmers willing to sell had not been very successful. Nevertheless, a large number of people had already been settled on land purchased in that way. The Government was consequently examining the experience of neighbouring countries with a view to enacting further legislation to force commercial farmers to sell land at a price which it would determine.

23. With regard to the distribution of resources and the steps taken by the Government to raise the living standards of the majority, the National Development Corporation had been established under the auspices of the Ministry of Trade and Industry and provided soft loans for individuals and small businesses engaged in trade, fishing, agriculture, mining, building, brick-making, carpet-making, and so forth.

24. Parliament had criminalized racial discrimination through the Racial Discrimination Prohibition Amendment Act of 1991, section 2 of which was referred to in detail in paragraphs 18 to 20 of the report. Penalties for offences under section 2 were referred to in paragraph 21 of the report and were provided for by the Criminal Code.

25. With regard to the administration of the estates of deceased persons, discussed in paragraphs 11 to 13 of the report, cases where the two systems conflicted were decided by the courts. The Law Reform and Development Commission was currently examining the relevant customary law and legislation of neighbouring countries. Although the law governing the estates of blacks was culturally based, the standardization and progressive harmonization of the two systems was essential, particularly where customary law discriminated against the most vulnerable groups.

26. The "usual marital regime" referred to in paragraph 14 was a marriage in which property was held in common by the spouses unless it was expressly stated otherwise. The Married Persons Equality Bill, currently going through Parliament, would outlaw any discrimination in the property regime by providing for full equality between spouses.

27. The information given in paragraph 15 of the report would be enlarged on in Namibia's eighth report.

28. With regard to paragraph 16, concerning article 3 of the Convention, the 1991 Racial Discrimination Prohibition Amendment Act specifically prohibited and criminalized racial discrimination and the practice and ideology of apartheid. It also prohibited the publication and display of advertisements or notices indicating an intention to perform any act which constituted racial discrimination. It was up to the Prosecutor General to decide whether a prosecution under the Act should take place. Cases in which an organization was accused of unlawfully promoting racial discrimination would be decided by the courts.

29. The Constitution provided for equality and freedom from discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed and social or economic status. Namibians also enjoyed the rights provided for in international instruments recognized by Namibia. There was no discrimination in Namibia based on national origin. Foreign nationals lived and worked in Namibia freely, provided that their stay in Namibia was duly authorized.

30. With regard to article 6, he said the State-sponsored legal aid scheme was available to indigenous peoples on request. Magistrates and judges were obliged to inform suspects and arrested persons of their right to legal aid

under the 1991 Legal Aid Act. The same information was provided in the remote areas by magistrates offices and by the Ombudsman on his routine visits. NGOs also played an important role in the dissemination of such information.

31. On the question of available remedies, the Ombudsman might recommend action to Parliament which might in turn make appropriate recommendations or take appropriate action.

32. The fact that there had been only one prosecution for racial discrimination did not imply that the number of such acts had declined, but rather that people were afraid to take cases to court or were unaware of their rights, particularly in respect of the availability of legal aid.

33. The protection afforded under section 11 of the Constitution was broader than provided for in the Convention and there was no intention to reduce its scope. The issue would be expanded upon in Namibia's next report.

34. Under section 18 of the 1991 Racial Discrimination Prohibition Amendment Act, in cases where the Prosecutor-General refused to prosecute, a private individual could institute a private prosecution and apply for legal aid. In cases of discrimination by one individual against another, it was up to the individual to take the matter to court. The Government discouraged all discriminatory practices in sport, recreation, education and cultural activities. Where difficulties persisted, it was possible to propose amendments to section 18.

35. Mr. SHERIFIS, referring to the statement that persons might be unaware of their rights in Namibia, asked whether the Convention was published in that country, whether Namibia's report had been publicized in any way and whether the concluding observations of the Committee and the summary records of the discussions would be published.

36. Mr. WOLFRUM, referring to the question of identification as Namibians above all else, said that although he fully understood that policy, a country had an obligation under article 1 (4) and article (2) of the Convention to improve the situation of groups with an inferior status. That obligation could not be fulfilled unless such groups were identified and their needs assessed.

37. Mr. DIACONU, referring to paragraphs 11 to 14 of the report, said that Namibia was taking the right approach to eliminating discriminatory legislation. As far as article 4 of the Convention was concerned, the Government needed to reflect further on its current legislation.

38. Mr. CHIGOVERA said that the Committee would be particularly interested in receiving the text of the 1991 Racial Discrimination Prohibition Amendment Act, which might be re-examined in the future with a view to incorporating into it the prohibition of discrimination on tribal or ethnic grounds, given the ethnic diversity of the population.

39. Details of any affirmative action legislation passed under section 23.2 of the Constitution and of any concrete measures taken pursuant to such legislation would also be useful, as would details of the 1995 Traditional

Authorities Act and its impact on the land rights of the traditional communities. In that connection its impact on the Bushmen would be of special interest, as they appeared to be the only group in Namibia without pension rights due to the fact that they lacked documents proving identity or nationality. The Committee would be interested to know what steps the Government was taking to rectify that situation. Information on the Cultural Land Reform Act and on land distribution measures taken as a result should also be provided.

40. Mr. ABOUL-NASR said that he was against the identification of racial, ethnic or religious groups in any country, particularly bearing in mind the results of such identification in the past. The fact that some groups were not recognized was clearly a problem which the Committee needed to reflect on in the future.

41. Mr. WOLFRUM said that identifying an individual as belonging to a certain group was a violation of the Convention. However, Governments needed to respond to self-identification, on which the Committee had once passed a general recommendation, in order that persons so identified might participate in public affairs and benefit for example, from the distribution or redistribution of land and pension schemes.

42. The CHAIRMAN thanked the representative of Namibia for his replies and expressed the hope that the occasion would mark the start of a lasting dialogue.

43. The representative of Namibia withdrew.

Tenth, eleventh, twelfth and thirteenth periodic reports of Venezuela (CERD/C/263/Add.8/Rev.1 and HRI/CORE/1/Add.3) (continued)

44. At the invitation of the Chairman, the delegation of Venezuela took seats at the Committee table.

45. Mr. CHIGOVERA said that article 61 of the Venezuelan Constitution, referred to in paragraph 3 of the periodic report (CERD/C/263/Add.8/Rev.1) made no reference to discrimination based on colour, descent or ethnic origin. The Government might therefore consider re-examining that article with a view to ensuring full compliance with article 1, paragraph 1, of the Convention.

46. Census data quoted in the United States Department of State Report on Human Rights Practices for 1994 showed that in 1992, 40.5 per cent of the indigenous population over the age of 10 was illiterate, 65 per cent of indigenous communities had no schools and 63.8 per cent had neither a school nor a dispensary. Assuming that information to be correct, he asked the delegation to comment on whether the indigenous peoples were realizing their right to education and whether that right was accompanied by a duty on the part of the State to ensure the indigenous population's access to education. The reported low literacy rates and absence of medical facilities among the indigenous population also raised questions about the ability of that population to enjoy the constitutional rights referred to in paragraphs 25 and 40 of the report. Was the Government taking concrete measures to address the situation? He asked for information on the composition of the Office of

Indigenous Affairs of the Ministry of Education, referred to in paragraph 33, and whether members of the indigenous communities were involved in the running of the Office.

47. Considering the importance attached to Decree No. 283 containing a plan for intercultural bilingual education (paras. 43 and 44), he invited comment on the observation in a report of the Indigenous National Council of Venezuela (CONIVE) that the Ministry of Education had until now shown no interest in implementing the Decree. The same report indicated that only 17 per cent of indigenous communities had legal documents accrediting the ownership of their lands. He asked for explanations, especially in the light of the Agrarian Reform Act, referred to in paragraph 53 of the periodic report. What steps was the Government taking to regularize the land rights of the indigenous population?

48. Regarding the statement in paragraph 77 of the report, in connection with article 4 of the Convention, that there was no need to legislate as Venezuela had no problems of discrimination or justification of discrimination, he said that States parties had a binding obligation to take the measures provided for under article 4. As to whether there was any justification for such legislation, the Country Rapporteur had already referred to incidents of violence against the indigenous population and he himself had referred to their poor literacy levels and economic conditions and lack of basic health care and other amenities. He also drew attention to a 1994 newspaper report about a riot in a Venezuelan prison, resulting from inter-ethnic conflict, leaving 103 dead and 45 wounded.

49. Mr. van BOVEN noted that Venezuela was not one of the many countries that claimed that racial discrimination within the meaning of the Convention did not exist in their territory. Observing that the Convention was to date the international human rights instrument with the most bearing on the rights of indigenous populations, he noted that a substantial part of the periodic report was devoted to that subject. He drew attention to article 1 and, in particular, article 2, paragraph 2, of the Convention, specifying that the "special" measures referred to therein amounted to affirmative action or preferential measures on behalf of disadvantaged groups, in order to ensure full equality. The list in paragraph 59 of the report retracing the measures and legislation adopted over the years was much appreciated. He would be interested to know whether the process of ratification of ILO Convention No. 169, described as being "currently under consideration" in 1989, had now been completed. If so, it would be an important step forward, as that Convention represented a considerable improvement over ILO Convention No. 107. The reason for his question was that the Indigenous National Council of Venezuela had reported objections by the Venezuelan Government to the revision of the earlier Convention. The Council had also reported that the draft Law of Indigenous Peoples and Cultures, still under deliberation by the Chamber of Deputies, had been drafted without the participation of the indigenous population and had not been given much priority. Could information be provided on the state of progress? Reports from the same source about the high mortality rate among the indigenous population and their lack of access to medical care confirmed his suggestion

that affirmative action was needed. He expressed concern about the Council's report that ultra-fundamentalist religious missions such as Nuevas Tierras and the Adventistas denied, prohibited and distorted virtually all the cultural manifestations of the indigenous communities and imposed a very absolute form of evangelism. Such a situation might require measures under article 4 of the Convention, but he acknowledged that it was a highly sensitive issue, with no ready solutions.

50. He asked whether the Venezuelan Government was planning to make the declaration under article 14 of the Convention, whether it would consider ratifying the amendments to article 8 of the Convention concerning methods of financing the Committee, and to what extent the Convention, the rights it covered, the report to the Committee and the latter's observations, were publicized in Venezuela.

51. Mr. ABOUL NASR pointed out that the United Nations had proclaimed the years 1994 to 2004 the International Decade of the World's Indigenous People. The question of the Committee's contribution to the Decade, on which it had not been consulted, might well be taken up by the Chairman at the forthcoming meeting of persons chairing the human rights treaty bodies.

52. In its report, Venezuela had dealt frankly with some of the complex issues involving indigenous populations. The general approach to the question of indigenous populations and their rights had evolved over the years. The first step had been to secure recognition of such populations by the international community and the countries in which they lived, and acknowledgement of the crimes and injustices of the past. Such acceptance was now widespread, and could be seen in the reports of States parties to the Convention, among them Venezuela. In addition, many countries with indigenous populations, including Venezuela, had made efforts to put an end to some of the discrimination of the past by enacting enforceable legislative measures and taking other steps to remedy some of the problems faced and ensure equal treatment. There was now a recognition of the right to be different, the right of indigenous peoples to their own culture, religion and way of life, and their right not to be subjected to the imposition of alien standards.

53. As yet, however, no country had considered compensation for the losses suffered by indigenous peoples - the land which had been taken (even though the "contracts" justifying the land transfers were widely considered to be null and void), the gold and silver which had been looted and the culture which had been destroyed. Apologies and attempts to improve health care or education were not an alternative to adequate compensation. Perhaps the Committee could make some statement on the right to compensation as its contribution to the International Decade. Did the Venezuelan delegation have any ideas to offer?

54. He wished to dissociate himself from the persistent inquiries made by some other members about the intention of States parties to allow individuals to address their complaints to the Committee, as provided for in article 14, paragraph 1. States parties were within their rights in deciding not to make the declaration provided for in that article.

55. Mr. DIACONU, noting that the statistics in Brazil's report (CERD/C/263/Add.10) distinguished three groups (White, Black and Coloured), with a separate chapter on indigenous peoples, and that Bolivia's report (CERD/C/281/Add.1) provided social indicators for the indigenous population, said he would have welcomed similar information from Venezuela.

56. The Committee's main concern was the social and economic situation of indigenous peoples in Venezuela, and the risk of violation of their rights posed by the operations of large mining and timber companies and livestock breeders. There had also been allegations that the largest ethnic group in the State of Amazonas had not been able to participate in the drafting of the State constitution. He would welcome further information on those points. Bolivia had established indigenous areas governed by special legislation: had Venezuela established anything similar?

57. He considered that, at present, the domestic legislation of Venezuela did not adequately implement article 4 of the Convention. New legislation was needed to specifically prohibit acts of racial discrimination and organizations practising or advocating it. For instance, the activities of certain religious organizations in indigenous areas, which sought to eradicate the indigenous people's cultural practices, appeared to constitute acts of racial discrimination and ought to be punishable under the law.

58. He asked whether indigenous people had full access to the justice system and to the constitutional remedy of amparo. Did the courts use indigenous languages or were interpreters provided?

59. Mr. YUTZIS said that, in his opinion, there were differences between Latin American countries. In countries such as Bolivia, Peru and Mexico, indigenous people still accounted for a large proportion of the population, whereas countries such as Argentina had fewer indigenous people and more people descended from European immigrants or Black slaves, which had eventually led to a mixed-race society.

60. The economic situation of Venezuela was currently relatively favourable, but it was important to ensure that all population groups reaped the benefits of that prosperity on equal terms.

61. The Venezuelan representative had referred to a law on indigenous communities, which was currently being considered by the Chamber of Deputies. He hoped that the law would help to coordinate the various activities on behalf of indigenous peoples, which were currently the responsibility of many different agencies.

62. He had been surprised by the reference in paragraph 28 of the report to "concerns expressed by several delegations in the General Assembly". Did that refer to the latest session of the General Assembly, in 1995?

63. Paragraph 32 and several others referred to "continuing education". He asked for statistics about the places where such education was provided and the rate of participation of indigenous people, as well as details of places

where the "bilingual, intercultural curriculum" referred to in paragraph 45 was actually in use. Where were the "intercultural educational institutions" referred to in paragraph 47? He would also welcome data about the use of indigenous languages in education.

64. Paragraph 59 referred to "special educational services for the indigenous population" established under article 51 of the Basic Education Act. He asked for more details of those services and where they were provided. He was sure that the Venezuelan Government monitored its policies in some way, and detailed statistics and examples were very useful to the Committee.

65. He asked the Government to expand, in its next report, on the statement in paragraph 51 that "small indigenous groups" were allowed to consume the hallucinogenic substance yopo during magical religious ceremonies. Did the phrase refer to members of small indigenous communities, or to small numbers of people at any one time?

66. Paragraph 53 dealt with the very significant issue of land rights. He asked how many land titles had been granted to members of indigenous groups, and whether they had been granted to individuals or to whole communities. He had obtained reports of indigenous communities which had been fighting to regain their land rights for many years; he would like to know how many disputes there had been involving the land rights of indigenous peoples.

67. In Venezuela, as in many other countries, increasing numbers of rural inhabitants were moving to the cities to seek work and better living conditions. What measures had the Venezuelan Government taken to protect indigenous people in that situation? He would also welcome details about measures taken to help the Yanomami people of the upper Orinoco region, whose traditional lands had been devastated by floods.

68. The activities of religious organizations were a sensitive issue. Research had shown that ethnic minorities sometimes voluntarily adopted the religious beliefs of the majority because they felt they had something to gain by so doing: it was not always fair to accuse the majority religions of exerting undue pressure. How did the Government strike a balance between the need to protect indigenous peoples from possible abuses on the part of religious groups, including such well-known denominations as the Seventh-Day Adventists, and the right to freedom of conscience?

69. Mr. SHERIFIS asked for statistics showing the results of the measures to protect and promote the interests of indigenous peoples, such as the percentage of illiterates among indigenous people and their representation in the Government, the legislature, the judiciary and the diplomatic service.

70. He commended the Venezuelan Government on the measures it had taken to conduct censuses of the indigenous population (para. 27 of the report) and guarantee freedom of movement (para. 89) and its condemnation of all forms of racial segregation (para. 68). However, like other members, he considered that Venezuela was not adequately implementing article 4 of the Convention.

71. He noted that Venezuela had no plans to make the declaration provided for in article 14, paragraph 1 of the Convention, but had recognized the competence of the Human Rights Committee to consider communications from individuals by ratifying the Optional Protocol to the International Covenant on Civil and Political Rights.

72. Finally, he asked whether the Government supported the proposed amendments to the Convention relating to the financing of the Committee's activities and whether the Government publicized the provisions of the Convention, the Government's reports to the Committee and the Committee's concluding observations within Venezuela.

The meeting rose at 1.05 p.m.